IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 571 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

==========

GIGABHAI VIRABHAI MAKWANA(BAROT) & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR JA ADESHRA for Applicant(s) : 1 - 2.
MR DIPEN DESAI ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,
MR VM PANCHOLI for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 26/07/2007

ORAL JUDGMENT :

1. The petitioner has invoked Article 226 of the Constitution and relevant provisions of the Code of Criminal Procedure, 1973 (for short, "the

Code") for direction to the trial court to immediately transfer Criminal Case No.34 of 2006 pending against the petitioners before Fast Track Court at Amreli. It is stated in the petition and submitted by learned counsel Mr.Adeshra that the petitioners, father and son, implicated, *inter alia*, in the case punishable under section 302 of the Indian Penal Code, 1860 were apprehending that the witnesses in the trial against them would be influenced to ensure their conviction. Such apprehension was based upon the averments, allegations and facts to the effect that brother of original complainant, who would be the main witness, was an Assistant Sub Inspector and other relatives of the complainant were very strong and influential persons. It is also stated that another criminal case arising from the same incident, namely Criminal Case No.35 of 2006, was pending against the original complainant in the same court and the witnesses who may be called to depose in the court either as defence witnesses in the case against the petitioners or as prosecution witnesses in the case against the original complainant may be influenced by influential group of persons at the disposal of original complainant.

2. Upon the original complainant being joined as respondent No.2 and appearance of learned advocate Mr.Pancholi for him, it was stated and submitted that the petitioners themselves had a very long record of criminal cases against them and, when the trial was about to begin, the present petition was made with an ulterior motive on the basis of improper and untrue allegations. A statement was, however, clearly made by learned advocate Mr.Pancholi that the brother of respondent No.2, namely Mr.Laljibhai Arjanbhai Chavda, who was presently posted in Police Department of Amreli District, will not, directly or indirectly, make any attempt to influence, coerce or restrain any of the witnesses in any of the aforesaid two criminal cases. It was also submitted that the petition was based only on apprehensions of the petitioner which had no basis in facts and not a single incident of any witness being influenced or any evidence being tampered was cited in the petition. Learned advocate Mr.Pancholi relied upon judgments of this court in ***Laxmanbhai Khumaji Barod v. Balubhai Parshotambhai [1981 GLR 201]*** and in ***Patel Maganbhai Kurjibhai v. State of Gujarat [1989 (2) GLH (U.J.9) 14]***.

3. Therefore, in the facts and for the reasons discussed hereinabove, the petition is dismissed with liberty to the petitioners to make appropriate application for protection of petitioners as well as their witnesses, if an occasion for such application arises and with liberty to make a fresh application, if any evidence in fact were sought to be tampered by the complainant, his brother or his relatives. With these observations, petition is dismissed and Rule is discharged with no order as to cost.

Sd/-
(D.H.Waghela, J.)

(KMG Thilake)